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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,136	02/04/2004	Richard J. McCann	104841.1	4260

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EXAMINER

LANDRUM, EDWARD F

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 08/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/772,136

Applicant(s)

MCCANN, RICHARD J.

Examiner

Edward F. Landrum

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collins (U.S Patent No. 4,451,982) in view of Poehlmann (U.S Patent No. 5,9647,035).

Collins teaches (see Figures 5 and 6) a blade movably secured to a handle, and a locking mechanism (24) that locks the blade in an extended position. The locking mechanism (24) is biased into position by spring (62) in chamber (50). Wherein the movement of the locking mechanism (24) from the locked position to the unlocked position causes the chamber (50) to reduce in volume thereby compressing the spring (62) to create a force against the locking mechanism (24). Furthermore, Collins teaches (Col. 3, Lines 31-33) any type of biasing means will work provided it fit into chamber (50).

Collins teaches all of the elements of the current invention as stated above except the use of a gas spring.

Poehlmann teaches (Col. 8, lines 31-35) replacing a metal spring with a pneumatic or hydraulic biasing means for the purpose of biasing a locking mechanism on a folding knife.

It would have been obvious to have modified Collins to incorporate the teachings of Poehlmann to create a biased locking mechanism that did not rely on a coil spring to supply a biasing force. A coil spring and a gas spring are equivalent structures and would only require routine skill in the art to change from one to the other. Furthermore, using a pneumatic or hydraulic biasing means with a piston would be more resilient to wear and less likely to break or deform is pushed or pulled to extremes.

***Response to Arguments***

2. Applicant's arguments filed 6/16/2006 have been fully considered but they are not persuasive.

Regarding applicant's remarks applicant provides no structure to the gas spring besides that it is substantially sealed and comprises a movable wall. It is inherent in the design of pneumatic forced systems for the system to be substantially sealed and use a movable wall to create a variable volume chamber. Furthermore, the pneumatic system of Poehlman would be used as a replacement to a standard spring, thereby showing that metal spring and pneumatic systems are equivalent and can be replaced with each other.

3. The declarations under 37 CFR 1.132 filed 6/16/2006 are insufficient to overcome the rejection of claims 1 and 2 based upon 35 U.S.C. 103 (a) as set forth in this Office action because: the declaration fails to provide convincing reasons that indicate Collin's knife as modified above is not capable of performing the same function as the folding knife of the instant invention. The declaration also fails to provide convincing reasons why Collin's folding knife cannot be modified by Poehlmann's

disclosed pneumatic spring. The declaration also fails to provide any facts or proofs regarding the instant invention or the prior art. There is also no connection between the claims of the instant invention and the alleged evidence which is provided in the declaration. Applicant's argument that the commercial success of the invention is an indication of significant non-obvious import with respect to the art is not persuasive. The declaration is insufficient because it fails to indicate the commercial success of the claimed invention. No evidence was presented that the envelope opener in claims 1 or 2 is commercially successful as claimed. In addition, commercial success must be derived from the claimed invention. Merely, showing that there was commercial success of an article which embodied the invention is not sufficient because such success could have been the result of heavy promotion or advertising, shift in advertising, consumption by purchasers normally tied to applicant or assignee, applicant or assignee's position as a market leader before the introduction of the patented product, or other business events extraneous to the merits of the claimed invention. See MPEP 716.03(b).

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Wirges et al (U.S Patent No. 4,240,619) teaches using a gas spring to lock a pivoting member of an apparatus into an extended position.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward F. Landrum whose telephone number is 571-272-5567. The examiner can normally be reached on Monday-Friday 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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EFL

8/1/2006

A handwritten signature in black ink, appearing to be 'EFL', written over the printed name and date.A handwritten signature in black ink, appearing to be 'R. Ashley', written above the printed name and title.

**BOYER D. ASHLEY**  
**SUPERVISORY PATENT EXAMINER**